THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.16536 OF 2005

DATED: 29-07-2005

BETWEEN;

Sri Raja Rajeswari Ammavari Alayam, Vengal Rao Nagar colony, Hyderabad, rep. By its Chairman.

..PETITIONER

VS.

The Commissioner of Endowments, Hyderabad and two others.

RESPONDENTS

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.16536 OF 2005

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ORAL ORDER

Heard Sri I.Laxmikanth Rao, learned counsel for the petitioner, learned Government Pleader for Endowments, and Sri J.Prabhakara Rao, learned Standing Counsel for A.P.Housing Board.

The order, impugned in this writ petition, is passed by the 1st respondent-Commissioner of Endowments, Hyderabad in R.P.No.2/2005. The said R.P. was taken up, *suo motu,* by the 1st respondent against the order passed by the Deputy Commissioner, Endowments, Hyderabad in I.A.No.6 of 2004 in O.A.No.5 of 2004 in the matter of Sri Raja Rajeshwari Ammavari Temple, Vengalrao Nagar,Hyderabad with regard to the land admeasuring 398 square yards situated at Vengalrao Nagar Colony,Hyderabad. O.A.5 of 2004 was filed by the petitioner herein before the Deputy Commissioner of Endowments under Section 87(1) of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act,1987(for short " the Act"). The Deputy Commissioner passed an order, dated 23-01-2004, restraining the Hyderabad Metro Water Works and Sewerage Board from taking up any work in

the disputed site till further orders. Against the said order passed by the Deputy Commissioner, pursuant to the application filed by the petitioner under Section 87(1) of the Act, the 1st respondent exercised his powers under revision *suo motu* under Section 92 of the Act. Sri I.Laxmikantha Rao, learned counsel for the petitioner submits that the order, impugned in this writ petition, as passed is without jurisdiction. The learned counsel contends that since there is a right of appeal under Section 88 of the Act against an order passed under Section 87(1) of the Act to the District Judge and within the limits of Municipal Corporation of Hyderabad to the Chief Judge, City Civil Court, Hyderabad, in such cases the power of revision under Section 92 is not available. In this connection Section 92 of the Act may be referred to, which reads thus:

1. The Commissioner may either *suo motu* or on application, call for and examine the record of any Deputy Commissioner or Assistant Commissioner, or of any other Officer subordinate to him or of any Executive Officer or any trustee of a charitable or religious institution or endowment, other than a math or a specific endowment attached to a math and in respect of any administrative or quasi-judicial decision taken or order passed under this Act, but not being a proceeding in respect of which a suit or an appeal or application or reference to a Court is provided by this Act to satisfy himself as to the Correctness, legality or property of such decision or order taken or passed, and if in any case, it appears to the Commissioner that such decision or order should be modified, annulled, reversed or remitted for reconsideration, he may pass orders accordingly.

2. The Commissioner shall not pass any order prejudicial to any party under sub-section (1), without giving him an opportunity for making representation.

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Inasmuch as Section 88 of the Act provides for an appeal to the Chief Judge, City Civil Court, Hyderabad against an order passed by the Deputy Commissioner under Section 87(1) of the Act, the Commissioner-1st respondent does not have jurisdiction to exercise his *suo motu* powers of revision under Section 92 of the Act. The impugned order is clearly without jurisdiction, and as such is set aside.

The writ petition is accordingly allowed at the stage of admission. No order as to costs.

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RAMESH RANGANATHAN,J

29th JULY 2005

Note

Issue CC

In two days.

(B/O)

*TSNR